STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

THE ILLINOIS POWER AGENCY	)	
	)	
Petition for Approval of	)	Docket No. 09-0373
Initial Procurement Plan	)	

JOINT RESPONSE OF WIND ON THE WIRES and THE ENVIRONMENTAL LAW AND POLICY CENTER to OBJECTIONS to THE ILLINOIS POWER AGENCY'S POWER PROCUREMENT PLAN

NOW COMES Wind on the Wires and Environmental Law & Policy Center (jointly referred to as "WOW/ELPC") filing a Joint Response, pursuant to the Administrative Law Judge's Ruling of October 7, 2009, to the objections filed by parties on October 5, 2009. WOW/ELPC respond to the objections or statements of lack of support for the Long Term Portfolio by Commonwealth Edison ("ComEd"), the Ameren Illinois Utilities ("AIU"), the Illinois Commerce Commission Staff ("Staff") and Exelon Generation Company, LLC ("Exelon"). Since a significant portion of the objections discussed by the aforementioned parties are similar, our responses are by issue and may address numerous objections.

Generally, WOW/ELPC supports the IPA's proposal to have longer term power purchase agreements for renewable energy resources ("Long Term Renewable

Portfolio") for both AIU[1] and ComEd[2] and our Responses will be limited to the concerns raised by parties regarding that proposal.

RESPONSE

The Purchase of 3.5% of Annualized Load Volumes as Renewable Energy is Low Risk

ComEd and Staff raise varied concerns regarding the level of risk of a long term renewable portfolio, including the effects of smart grid, of residential customer migration in a competitive market[3] and the uncertainty of output from a wind farm over the long term[4]. None of these concerns demonstrate that the 3.5% of long term renewable energy is a risky endeavor.

There are a number of unknowns surrounding smart grid such as if it will even be built in Illinois. In docket 07-0566, the Illinois Commerce Commission directed ComEd and AIU (the "Utilities") to conduct a Statewide Smart Grid Collaborative that yields a Collaborative Report that includes a proposed smart grid vision for Illinois.[5] The Statewide Smart Grid Collaborative is still ongoing[6] and a Collaborative Report has not yet been filed with the Commission. Even after the development of a strategic plan, there is no guarantee, or even requirement, that either utility move forward with

1 Illinois Power Agency Power Procurement Plan to the Illinois Commerce Commission, Sept. 30, 2009 ("Procurement Plan" or "Plan") at 34.
2 Id. at 51.
3 ComEd Objections at 8.
4 Staff Objections at 14-17.
5 Final Order, Docket No. 07-0566 at 141 (Sept. 10, 2008); Final Order, Dockets 07-0585 to 07-0590 at 264-65 (Sept. 24, 2008).
6 *See* http://www.ilgridplan.org/default.aspx -- stating that workshops will be held as late as December 17, 2009.

development of a smart grid.[7] Moreover, the types of benefits of a smart grid – heightened demand response and energy efficiency, ability to use distributed energy resources, ability to use photovoltaic hybrid electric vehicles – have not been clearly identified in Illinois. ComEd's approach would be to wait and evaluate the long-term power contracts presumably while ComEd and AIU better define the benefits and energy reductions caused by a smart grid. To take a wait and see approach would result in the loss of a valuable opportunity to establish long term renewable resources within Illinois at a discounted rate (because developers can take advantage of the Federal Stimulus Bill and receive federal grants or credits if they construct turbines before the end of 2010; a more in depth discussion is provided below).

If a smart grid is constructed, the grid effects on the near term should be small since the penetration of the applications technologies is slow and probably would occur over a number of years and not months. During that time the IPA and ICC have the ability to evaluate the likelihood of customer migration and reductions in load to make the necessary corrections to minimize or control the risks.

ComEd also raised a concern regarding customer migration as the Office of Retail Market Development continues to take steps to create a competitive retail market for residential ratepayers.[8] ComEd alluded to the migration of commercial and industrial customers from utility electric service to that of an alternative electric service provider.

[7] Final Order, Docket 07-0566 at 143 (stating "Thereafter, ComEd may file a plan for implementation and re-file its request for rider recovery of smart grid investments.").
[8] ComEd Objections at 8.

However, ComEd (nor AIU) did not provide any information or forecasts showing the relation between the migration of commercial/industrial customer and what residential customer might do. The bottomline is that they provided no facts that outweigh the IPAs consideration of migration and its determination that laddering-in purchases was the best way to minimize risk for consumers in light of smart grid and customer migration.[9] In the middle of the second paragraph of page 17 of the Procurement Plan, the IPA summarized its analysis of customer migration as follows:

> Unpredicted migration to ARES ["alternative retail electric suppliers"] suppliers presents some level of risk to the portfolio insofar as migration can cause cost spiraling under certain conditions. For example . . .
>
> In such a situation, higher-than-market bundled rates would motivate switching by those customers who could be profitably served by ARES's at the relatively lower market prices. As the number of bundled services customers eroded, those remaining on bundled rates would effectively be paying not only for the cost of their consumption, but also the costs of disposing of the volumes secured for customers who have switched to other suppliers. . . . **For this reason, laddering-in purchases over time enables the IPA to minimize risk for consumers by allowing the Agency to adjust procurement volumes in response to changing customer needs and market conditions**.

If ComEd, or any party, thought the IPA's analysis above was insufficient they should have pointed to or presented information that was not considered by the IPA or that would have altered the IPA's analysis. Given the absence of such facts, the Commission should find that the IPAs analysis is sufficient.

[9] *See* Procurement Plan at 17.

Finally, Staff raised a concern that the level of output from a wind farm is variable and thus a long range plan is impossible to determine.[10] This concern is really an operations issue (managing variability and uncertainty in operations planning and real-time operations) and has little relationship to long range planning.

To the extent the variability of output that Staff is related to long range planning and procurement it affects the hedge that is proposed. Hedging for wind energy is similar to hedging for variability between generation and demand (load) -- which requires sufficient flexibility and resources to match the generation and load. The variability Staff is concerned with is managed at two levels. First, within the total portfolio developed by the IPA sufficient flexibility is provided to accommodate that variability by laddering-in purchases over time.[11] The closer you are in time to the event for which the procurement is being made, the information you base that purchase upon is more accurate and thus your portfolio should be more accurate. Purchasing only 3.5% of the load at this time still provides plenty of head-room to make adjustments over the life of the long term contract. Second, as an operational concern the wind variability is managed by the regional transmission operator or independent system operator. The issues related to this operational concern are currently being addressed by The Midwest ISO and PJM in a number of forums.[12]

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[10] Staff Objections at 14-17.
[11] Procurement Plan at 17.
[12] For a description of The Midwest ISO's efforts see http://www.midwestmarket.org/page/Renewable+Energy+Planning+Efforts (as of 10/15/2009). PJM is developing its Regional Transmission and Expansion Planning Process ("RTEPP") and wind issues will be incorporated into that process.

In addition, when there is a shortfall between the contracted output and the energy delivered the contract has terms that address such situations. The PPA for the Long Term Renewable Portfolio has not been finalized. The Procurement Administrator, in consultation with the Commission, AIU, ComEd and any other interested parties are to develop the standard contract form for the PPA.[13] There is an opportunity to address the assignment of liability for the concerns raised by Staff at that time.

The Long Term Renewable Portfolio Fosters Environmentally Sustainable Electric Service

Staff and Exelon raise similar objections, stating that the Long Term Renewable Portfolios[14] for AIU and ComEd should be open to all forms of generation. Both arguments are based on the premise that the IPA is procuring all energy at the total lowest cost. This premise, however, appears to gloss over the cost effective standard of the Renewable Energy Resources Budget ("RRB")[15], the Illinois Renewable Portfolio Standard ("IL RPS")[16], the definition of "Renewable Energy Resources"[17] and the need

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[13] 220 ILCS 5/16-111.5(e)(2); *see also* Procurement Plan at 8.

[14] Procurement Plan at 34 and 51; *see also* 20 ILCS 3855/1-75(c)(2).

[15] Id. at 40-43 and 54-57.

[16] 20 ILCS 3855/1-75(c)(1). The IL RPS requires the IPA to purchase a certain percentage of cost effective renewable resources. The IL RPS increases from the current level of 7% to 10% by June 2015 and then increases at 1.5% per year until it reaches 25% in 2025.

[17] "Renewable energy resources" includes energy and its associated renewable energy credit or renewable energy credits from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, crops and untreated and unadulterated organic waste biomass, trees and tree trimmings, hydropower that does not involve new construction or significant expansion of hydropower dams, and other alternative sources of environmentally preferable energy. For purposes of this Act, landfill gas produced in the State is considered a renewable energy resource. "Renewable energy resources" does not include the incineration or burning of tires, garbage, general household, institutional, and commercial waste, industrial lunchroom or office waste, landscape waste other than trees and tree trimmings, railroad crossties, utility poles, or construction or demolition debris, other than untreated and unadulterated waste wood. 20 ILCS 3855/1-10.

to promote environmentally sustainable electric service[18]. These four requirements set the parameters for the IPA's purchase of renewable resources until at least 2025. The Long Term Renewable Portfolio proposed by the IPA meets all of these parameters.

The IPA has to purchase increasing amounts of renewable resources over the next fifteen years at a price somewhere between the lowest cost and the cost effective limit of the RRB. PJM estimates that states' renewable portfolio standards, in its' territory, will require 26 million megawatt-hours (MWh) of renewable energy in 2009 and increases to 200 million MWh needed in 2025.[19] Similarly, The Midwest ISO has 4,900 MW of wind as of the end of 2008 and needs 22,000 MW of renewable generation to meet the RPS requirements of the states in its territory.[20] Therefore, there is a need for renewable generation to be built over the next fifteen years.

The IPA's decision to procure long-term renewable PPAs takes advantage of the sharp drop in material and energy prices from peaks in 2008. From 2002 to 2008 the capacity-weighted average price of wind energy increased from approximately \$33/MWh to \$54/MWh.[21] However, some of the key factors driving those prices[22] up – cost of materials and energy -- have reversed course since late 2008. Copper is 25%

[18] 220 ILCS 5/16-111.5(d)(4).
[19] *See* http://www.pjm.com/Home/faqs/renewables.aspx (as of 10/15/2009).
[20] *See* http://www.midwestmarket.org/page/Renewable+Energy_inMidwest (as of 10/15/2009).
[21] *See* "An Update on U.S Wind Power Prices and the Factors that Influence Them", by Mark Bolinger, for DOE Office of Energy Efficiency and Renewable Energy, presented at Windpower 2009 Conference on May 5, 2009.
[22] Id.

lower than its peak in 2008[23], aluminum is approximately 40% below its peak in 2008[24] and closer to 2004 market prices, steel is in the range of 45% to 65% of its peak in 2008[25], and diesel is about 45% off the 2008 peak and more comparable to the rates the U.S. experienced in 2006-2007[26]. Energy prices are also lower: coal is 50 to 55% lower than its peak in 2008 and a little above its prices prior to the run-up in prices that started at the tail-end of 2007[27]; the average price of natural gas in 2009 is 35% less than the average price of 2008 and our prices currently are comparable to prices in 2004[28]. These trends indicate that wind energy prices should be favorable for ratepayers; therefore, this is an opportune time to issue a letting for long term renewable contracts to see the price range of the bids.

Moreover, the long-term renewable PPA fosters environmentally sustainable electric service[29] in two ways: by taking advantage of grants, loans and credit enhancements being offered by the Department of Energy[30], as a part of The American Recovery and Reinvestment Act of 2009, better known as the Economic Stimulus Plan; by furthering the creation of renewable resources in Illinois.

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23 *See* http://www.infomine.com/investment/HistoricalCharts/showcharts.asp?c=Copper (as of 10/14/2009).

24 *See* http://www.infomine.com/investment/HistoricalCharts/showcharts.asp?c=Aluminum (as of 10/14/2009).

25 *See* http://www.maps.co.uk/%20Carbon%20Price.htm and http:/www.maps.co.uk/Stainless%20Prices.htm (as of 10/14/2009).

26 *See* Energy Information Administration ("EIA") website -- http://tonto.eia.doe.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=DDR001&f=W (as of 10/15/2009).

27 *See* EIA website -- http://www.eia.doe.gov/cneaf/coal/page/coalnews/coalmar.html#spot (as of 10/14/2009).

28 *See* EIA website -- http://tonto.eia.doc.gov/dnav/ng/hist/n3050us3m.htm (as of 10/14/2009).

29 220 ILCS 5/16-111.5(d)(4).

30 Procurement Plan at 34 and 51.

For wind developers to be able to access the most beneficial federal stimulus funding – the 30% Investment Tax Credit which can be converted into a grant from the U.S. Treasury Department[31] – projects must meet the Federal Internal Revenue Service's definition of "under construction" by the end of 2010 and have the project in-service by the end of 2012. Long term PPA's for renewable resources would yield the following benefits in the wind industry: (1) allows wind developers to acquire least-cost financing; (2) enables investments in in-state projects which bring the commensurate economic development and price suppression benefits, and; (3) uses federal dollars to promote investments in Illinois. Thus, the timing of the long-term renewable PPA meets the requirements of Section 16-111.5(d)(4) by promoting environmentally sustainable electric service at a time when wind prices are low.

Finally, furthering the development of wind generation in Illinois ensures that environmentally sustainable electric service comes from within the State. Developing wind farms is a capital intensive endeavor. Investors that finance such developments need certainty on the project cash flows in order to finance the projects. Projects being built now are those that have the highest wind capacity or are closest to transmission and therefore have the lowest cost. The best wind locations will be developed first and less efficient and more costly sites will be developed as time progresses. If the long term renewable energy contracts are not entered into now, the developers of the current sites will enter into long term contracts to sell their wind elsewhere to meet another states RPS. The result is that as the Illinois RPS increases, only the most costly and or

[31] 26 U.S.C. §48(a)(5)

least efficient wind farms will be available for Illinois ratepayers to purchase energy from.

Accordingly, entering into long term renewable contracts as soon as possible fosters environmentally sustainable electric service at the lowest cost over time.

Terms of PPA Contract that Need to Be Clarified

AIU, ComEd and Staff all identified terms of the PPA that need to be explained, developed, or clarified if the Commission is to approve a Long Term Renewable Portfolio. The procurement process set forth in Section 16-111.5(e)(2) of the Public Utilities Act (220 ILCS 5/16-111.5(e)(2)) states that the IPA and utilities will work with the Illinois Commerce Commission and other interested parties to develop standard contract forms for the supplier contracts that meet generally accepted industry practices. While most of these issues raised by AIU, ComEd and Staff are typical contract terms that WOW/ELPC are confident can be handled through that process, WOW/ELPC will provide the following comments so as to inform the IPA and Commission of the wind industries' general views or preferences on these terms. This is not intended to preclude WOW/ELPC or any of WOW's member companies, whether jointly or severally, from taking different stances during the discussions in which the RFP and contracts are established.

Length of the PPA:

AIU, ComEd and Staff pointed out that there is no stated duration or length of contract.[32] AIU states its preference is for the contracts to be ten years or less.[33] WOW/ELPC would prefer the duration be twenty or twenty-five years. If the IPA's intent is to leave this term open-ended for the bidder to submit, WOW/ELPC would support such action.

If the Commission were to accept AIU's proposal to consider a ten year contract to be long term, then new wind farms would have to rely on merchant energy prices and spot REC prices from years 11 through 20. While it could be possible, though very difficult, to hedge the unsold energy from years 11 through 20, the spot RECs in that same period are impossible to hedge that far out. The uncertainty in years 11-20 will drive up the cost of capital of the investment, which will result in a higher price per MWh.

Most utilities in the country that seek long term PPAs with terms of 15-20 years typically assume that the price for energy and renewable energy will increase over the long term. The value of the PPA contract, therefore, is likely to be at its highest during the later years of the PPA term. In addition, there are two features on the horizon that could cause energy prices to increase -- the expiration of the production tax credit at the end of 2012, and the establishment of a national renewable energy standard. Both have certain likelihoods of happening and entering into PPAs that have durations that are beyond those events could allow Illinois ratepayers to capitalize on lower bid prices.

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[32] AIU Objections at 2; ComEd Objections at 9; Staff Objections at 12.
[33] AIU Objections at 2.

Fixed or variable quantities:

AIU and Staff raised a concern about whether the PPA would be for fixed or variable quantities of energy.[34] WOW/ELPC would prefer variable quantities. If the IPA's intent is to leave this term open-ended for the bidder to submit, WOW/ELPC would support such action.

Firm or unit contingent basis:

AIU and Staff raised a concern about whether the energy would be provided on a firm or unit contingent basis.[35] WOW/ELPC would prefer unit contingent basis. The overwhelming majority of renewable energy PPAs are provided on a unit contingent basis, where the wind generator is paid on an as-available basis. If the IPA's intent is to leave this term open-ended for the bidder to submit, WOW/ELPC would support such action.

Whether capacity is included in the purchase of Long Term Renewables:

AIU raised a concern whether capacity be included in the product definition.[36] WOW/ELPC believe that the bid prices will flow-through all products, to the extent they exist.

Delivery point:

AIU and ComEd raised concerns regarding the delivery point of the energy.[37] AIU states that it prefers the load zone over the generator bus. WOW/ELPC prefer the generator bus because the generator cannot manage the congestion risk from their bus bar to the load zone on a long term basis (15 to 20 yrs). Usually, the generator would

[34] AIU Objections at 3; Staff Objections at 11.
[35] AIU Objections at 3; Staff Objections at 11.
[36] AIU Objections at 4.
[37] AIU Objections at 4-5; ComEd Objections at 9.

need to include a price premium high enough to hopefully recover the potential losses that could result from congestion between the generation bus and the load zone. Having the delivery point be the generation bus bar removes that risk and should yield the lowest possible price.

The Renewable Energy Resource Budget Should Apply to the Utilities' Long Term Renewable PPAs

Both AIU and ComEd raise questions about the application of the Renewable Energy Resources Budget ("RRB") to the procurement of Long Term Renewables.[38] Both also assert that it is unclear whether the RRB is intended to even apply since the Long Term Portfolio proposal is in the energy only section of the Procurement Plan and not the Renewable Portfolio Standard section. The underlying question is whether the IPA is procuring renewable energy, by itself, or procuring renewable energy and its associated energy credits ("RECs"). Since the IPA is proposing to purchase renewable resources the RFP needs to bundle the energy and renewable energy credits. The Illinois Power Agency statute requires a "renewable resource" to be either a purchase of energy and its associated RECs or the purchase of RECs, from a defined list of types of renewable energy producers.[39] Furthermore, the purchase of these renewable resources should be applied to the Illinois renewable portfolio standard and be part of the RRB[40].

[38] AIU Objections at 5-6; ComEd Objections at 8.
[39] 20 ILCS 3855/1-10 (June 1, 2009).
[40] *See* 20 ILCS 3855/1-75(c)(1) (June 1, 2009).

Workshops are Not needed for the Procurement Plan

As already addressed above, the significant concerns raised by AIU, ComEd, the Staff and Exelon are already resolved, will be resolved through these Objections and Responses or will be addressed in December and January when the contract terms are developed. Therefore, no workshops are needed for the Commission to approve the use of Long-Term Renewables in this year's plan. However, WOW/ELPC would be more than amenable to participating in procurement plan design discussions for future procurement plans.

CONCLUSION

WHEREFORE, Wind on the Wires and Environmental Law & Policy Center respectfully request that the Commission deny the objections to the longer term power purchase agreements for renewable resources raised by AIU, ComEd, Staff and Exelon.

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Respectfully submitted,

/s/

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